4558

BILL NO. S-79-07-28

SPECIAL ORDINANCE NO. S-137-79

AN ORDINANCE approving Water Pollution Control Treatment Agreement between the City of Fort Wayne and Sewage Utilities of Indiana, Inc.

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the Water Pollution Control Treatment Agreement dated July 16, 1979, between the City of Fort Wayne, Indiana, by and through its Mayor and the Board of Public Works and Sewage Utilities of Indiana, Inc., for:

> The connection of the Pine Valley sewer system into the St. Joe Interceptor, thereby eliminating the treatment facility,

monies to be paid to City of Fort Wayne for hookup by Sewage Utilities of Indiana, Inc., all as more particularly set forth in said agreement which is on file in the Office of the Board of Public Works and is by reference incorporated herein, made a part hereof and is hereby in all things ratified, confirmed and approved.

SECTION 2. That this Ordinance shall be effective upon passage and approval by the Mayor.

Councilman

APPROVED AS TO FORM & LEGALITY

William N. Salin, City Attorney

Read the first time in full and on motion by Burns, seconded by Stier, and duly adopted, read the second time by title and referred to the Committee on City Utilities (and ~~the City Plan Commission for recommendation~~) and Public Hearing to be held after due ~~legal notice~~, at the Council Chambers City-County Building, Fort Wayne, Indiana, on ~~_____~~, the _____ day of ~~_____~~, 19__, at ~~_____~~ o'clock _____ M., E.S.T.

DATE: 7-24-79

Charles W. Westerman
CITY CLERK

Read the third time in full and on motion by Burns, seconded by Hinga, and duly adopted, placed on its passage.

PASSED (~~LOST~~) by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT	TO-WIT:
TOTAL VOTES	7	0		2	
BURNS	X				
HINGA	X				
HUNTER				X	
MOSES	X				
NUCKOLS				X	
SCHMIDT, D.	X				
SCHMIDT, V.	X				
STIER	X				
TALARICO	X				

DATE: 8-14-79

Charles W. Westerman
CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ZONING MAP) (GENERAL) (ANNEXATION) (SPECIAL) (APPROPRIATION) ORDINANCE (RESOLUTION) No. S-137-79 on the 14th day of August, 19 79.

ATTEST: (SEAL)

Charles W. Westerman
CITY CLERK

Winfield C. Moses Jr.
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 15th day of August, 19 79, at the hour of 11:30 o'clock A M., E.S.T.

Charles W. Westerman
CITY CLERK

Approved and signed by me this 20th day of August, 1979 at the hour of 9 o'clock PM., E.S.T.

Robert E. Armstrong
MAYOR

Held for Final Reading

Bill No. S-79-07-38

REPORT OF THE COMMITTEE ON CITY UTILITIES

We, your Committee on City Utilities to whom was referred an Ordinance approving Water Pollution Control Treatment Agreement between the City of Fort Wayne and Sewage Utilities of Indiana, Inc.

have had said Ordinance under consideration and beg leave to report back to the Common Council that said Ordinance DO PASS.

PAUL M. BURNS - CHAIRMAN

SAMUEL J. TALARICO - VICE CHAIRMAN

VIVIAN G. SCHMIDT

DONALD J. SCHMIDT

JAMES S. STIER

8-14-79
DATE

CONCURRED IN

CHARLES W. WESTERMAN, CITY CLERK

Memorandum

To Mayor Robert E. Armstrong - Mayor Date 8-8-79

From Charles W. Westerman - City Clerk

Subject Appearance before Common Council on 8-14-79

COPIES TO:

BILL NO. S-79-07-38

AN ORDINANCE approving Water Pollution Control Treatment Agreement between the City of Fort Wayne Sewage Utilities of Indiana, Inc.

Pursuant to the request of the Standing Committee Chairman of City Utilities of the Common Council, the presence of Edmund Stanczak, Jr., Superintendent of City Utilities, is respectfully requested on August 14, 1979, 7:00 P.M., Common Council Conference Room 128.

Further information is requested regarding the Pine Valley sewer system into the St. Joe Interceptor.

Your cooperation will be greatly appreciated.

VRichards

THE CITY OF FORT WAYNE

CITY-COUNTY BUILDING • ONE MAIN STREET • FORT WAYNE, INDIANA 46802

board of public works

July 17, 1979

The Common Council
Fort Wayne, Indiana

Gentlemen and Mrs. Schmidt:

The City of Fort Wayne, Indiana is entering into a Water Pollution Control Treatment Agreement with Sewage Utilities of Indiana, Inc., which provides for connecting Pine Valley sewer system into the St. Joe Interceptor, thereby eliminating the treatment facility.

Board of Works is anxious to consummate said agreement in order to expedite the hookup, above-described, and therefore, respectfully requests "Prior Approval" so that this may be accomplished.

Special Ordinance for formal approval will be submitted in the very near future.

Sincerely,

BOARD OF PUBLIC WORKS

Henry F. Wehrenberg
HENRY F. WEHRENBERG, CHAIRMAN

CITY OF FORT WAYNE

Robert E. Armstrong
ROBERT E. ARMSTRONG, MAYOR

ep
APPROVED:

MEMBERS OF THE COMMON COUNCIL

ATTEST:

CHARLES W. WESTERMAN, CLERK

7-18-79 a.m.

Signed copy not released by City Clerk's Office till p.m.

Council deadline 12:00 noon 7-18-79

July 2, 1979

WATER POLLUTION CONTROL TREATMENT

AGREEMENT BETWEEN

THE CITY OF FORT WAYNE, INDIANA

AND

SEWAGE UTILITIES OF INDIANA, INC.

THIS AGREEMENT (hereinafter referred to as "Agreement"), entered into this 16th day of July, 1979, by and between the CITY OF FORT WAYNE, INDIANA, a municipal corporation of the State of Indiana (hereinafter referred to as (Contractor"), and SEWAGE UTILITIES OF INDIANA, INC., a corporation of the State of Indiana (hereinafter referred to as "Contractee").

W I T N E S S E T H, THAT:

WHEREAS, Contractor has a sewage treatment plant that is presently receiving Federal and State Grant assistance in the expansion of the capacity thereof, which, when expanded, will have a capacity available for the treatment of sewage from Contractee; and

WHEREAS, Contractee is an Indiana Corporation which holds Certificates of Territorial Authority from the Public Service Commission of Indiana to render sewage disposal service within certain areas in Perry Township, Allen County, Indiana, and desires to contract with Contractor to treat sewage collected by Contractee; and

NOW, THEREFORE, Contractor agrees to provide Contractee with sewage treatment service through Contractee's connection with the Fort Wayne sewer system for sewage treatment pursuant to the following terms and conditions:

1. Effective Date. It is understood and agreed between the parties that the contract shall become effective after its execution and approval by the Board of Public Works and Common Council of the City of Fort Wayne and by the Board of Directors of Contractee and such regulatory agencies as may be legally required. It is also understood and agreed that

this Agreement is also subject to the approval of the Indiana Stream Pollution Control Board, the Indiana State Board of Health, and any other regulatory agency as may be legally required.

2. Term of Agreement. This Agreement shall continue in full force and effect for twenty (20) consecutive years from the effective date of this Agreement.

3. Interconnection. Contractor agrees to accept for treatment in its sewage system, sewage collection by contractee, at a connection point as indicated as "required metering and interconnection point for Pine Valley" on Exhibit "A-4" attached hereto and made a part hereof.

If additional tap-ins are agreed to hereunder by the parties, Contractee will prepare, provide and construct, at its expense, the following:

(A) Engineering plans and specifications for the gravity sewer line, pumping stations, measuring devices and appurtenances to connect its present system with the present Fort Wayne system at the metering and tap-in points, with copies of such plans and specifications to be given to the City of Fort Wayne at least two (2) weeks before the same are submitted for approval to the Indiana Stream Pollution Control Board and the Indiana Board of Health in order to allow Fort Wayne to review and make written comment with respect to said submissions.

(B) The easements relating to any land over which the transporting gravity sewer line is to be constructed are to be obtained and recorded.

It is expressly understood and agreed between the parties that all costs of the tap-in, including the planning, inspection and construction of any transporting gravity sewer line to said tap-in point shall be borne exclusively by Contractee.

4. Acceptance and Treatment of Sewage:

(A) Responsibility for Delivery and Transportation. Contractee shall be solely responsible for delivery of the sewage

material to the metering point and/or tap-in point in a form suitable for passage through the Fort Wayne sewer line system. The metering point and tap-in point are located as shown on Exhibit "A". Said sewage material shall be delivered from the Contractee's sewage line system to the tap-in and metering point by a gravity sewer line or force main. Contractor shall be solely responsible for transporting the sewage material from the tap-in and metering point and delivering same to its sewage treatment facilities.

(B) Treatment. Contractor shall be solely responsible for the proper treatment and transportation of the sewage materials received from Contractee in accordance with the requirements and standards of the Indiana Stream Pollution Control Board, Indiana State Board of Health and the Environmental Protection Agency.

(C) Sewage Materials Accepted. Subject to the approval of the Public Service Commission of Indiana, where said Agency's jurisdiction is applicable, Contractee shall comply in every regard applicable with Chapter 24 of the Code of the City of Fort Wayne, Indiana of 1977 (copy attached) as amended from time to time thereafter, and as applicable to all users of the system and specifically, but not limited to, Article III, Prohibited Industrial Discharge, and all Rules and Regulations of the Environmental Protection Agency. Contractor shall be under no obligation whatever to accept any type of waste or toxic materials, if said waste or material is a prohibited discharge under the rules of any regulatory agency having jurisdiction in the circumstances. Contractor has no obligation to accept radioactive material. It is recognized by Contractee that the Code of the City of Fort Wayne, Indiana of 1977, Chapter 24, may be amended from time to time so as to change the types of waste which must be accepted by Contractor and the parties specifically agree to such amendments; however, this shall not constitute a waiver of Contractee's right to testify or oppose passage of said ordinances and amendments. Upon discovery that unacceptable sewage materials as defined by Chapter 24 of the Code of the City of Fort Wayne, Indiana of

1977, as amended from time to time, or waste or materials deemed unacceptable pursuant to rules and regulations duly promulgated by any regulatory agency having jurisdiction, are being transmitted by the Contractee's connection to Contrator's system:

(1) Contractor shall immediately notify Contractee of such unacceptable sewage or materials, including the location, time or times, the nature of such unacceptable sewage or waste, and such other information as may be available.

(2) Upon verbal notification and confirmation thereof in writing and Contractee's ability to identify the user responsible for the delivery of such unacceptable sewage materials, Contractee shall notify that user to immediately cease delivery of such materials and/or waste within twenty-four (24) hours.

(3) Contractor shall, in the event Contractee is unable to identify the location, time and source of such unacceptable sewage, cooperate with Contractee in locating such source. The Contractee will use its best efforts to correct or cut off the user delivering unacceptable sewage materials to Contractee's and Contractor's systems.

(4) In the event that the user delivering such unacceptable sewage or materials through Contractee's Interconnection Point to Contractor's system, cannot be ascertained after diligent inquiry by Contractee and Contractor, then Contractee and Contractor shall give notice immediately to the Technical Secretary to the Indiana Stream Pollution Control Board, and request that an emergency investigation be instigated forthwith in regard to the matter. Said emergency investigation shall determine the severity of the damage to Contractor's collection and treatment facilities resulting from the discharge of such unacceptable sewage or materials. After such emergency investigation, the Technical Secretary to the Indiana Stream Pollution Control Board may issue an order mandating Contractee to cease delivering such unacceptable sewage. In the event Contractee does not comply with said order, then Contractor shall have the right to cease receiving sewage from Contractee at the interconnection point, and may disconnect at Contractee's

expense, or take other appropriate action consistent with the order of the Technical Secretary to the Indiana Stream Pollution Control Board until the cause for such action is remedied to the satisfaction of Contractee, Contractor, Environmental Protection Agency and Indiana Stream Pollution Control Board. Provided, however, that the right to cease servicing the entire system of Contractee, as in this paragraph set forth, shall be only for the delivering of unacceptable sewage or waste materials, as provided herein.

(D) Volume. In the event of flow which averages more than 0.250 mgd (hereafter "base mgd"), for any ninety (90) day period (hereafter "qualifying period"), then an additional treatment plant capital charge (hereafter "surcharge"), will be paid by Contractee, subject to the following provision:

(1). This surcharge shall be equal to the capital charge (as approved by EPA) for Contractor's treatment rate for all users multiplied by the ratio of the excess mgd during the qualifying period to the base mgd per 100 cu. ft. thereof.

(E). Cost of Treatment.

(1) Rate. Contractee agrees to pay to Contractor for the conveyance, treatment and billing of sewage flow received at the metering point both in respect of the volume and composition of such flow as set out in the contract rate attached hereto as Exhibit "B". As provided in said rate schedule, as approved by EPA and all legislative and regulatory bodies having jurisdiction thereof, Contractee agrees to pay, when applicable, any zone surcharge, excess strength surcharge, ~~or flat charge~~ so provided for.

The rates set forth in Exhibit "B", it is understood by the parties, will be subject to annual review and adjustment whenever the rates charged all other contract users are reviewed and adjusted.

It is understood by and between the parties hereto that Contractee may, in the event of a rate increase by Contractor,

apply to the Public Service Commission of Indiana for a rate increase to Contractee's customers. Contractor agrees that it will cooperate in connection with any hearing concerning said rate increase at Contractee's expense to the extent that the rate increase is necessitated by the increase in Contractor's rates to Contractee, but only to that extent.

(2) Metering and Sampling Devices. Contractee shall properly install and maintain these metering and sampling devices for the purpose of measuring the volume of sewage materials delivered by Contractee to the metering point for treatment, and to provide sampling and monitoring capability. Said metering and sampling devices shall be constructed in a manner and in a place acceptable to Contractor. The design of meters and metering points shall be approved by Contractor. Each such device shall be subject to the inspection, testing and approval of each party at all times. For these purposes, and for the purposes of reading and recording data from said meters, each party shall at all times have complete and free access to said metering points and devices. Notwithstanding the above, contractee may, at its *

The cost of planning, designing, building and installing any additional metering point or points and devices including acquisition of real estate shall be borne exclusively by Contractee. In addition, Contractee shall assume complete responsibility, including costs, for the installation, maintenance and repair of said metering device and will further defray any costs incurred by reason of testing of the metering devices as requests may be made by Contractor from time to time, provided such requests are reasonable as to frequency and nature of tests required.

Sampling devices which are capable of providing a twenty-four (24) hour composite sample taken hourly shall be installed and maintained by Contractor. The location of such sampling devices and the specifications thereof shall be

* expense, install a temporary metering device upon execution hereof for purposes of measuring the flow of sewage at the interconnection point until such time as the permanent metering device has been designed, approved and installed.

approved by the Contractor. Composite twenty-four (24) hour sampling will be conducted at the minimum of weekly intervals by Contractor. Parameters to be tested shall include PH, suspended solids, COD, BOD, phosphorus, metal ions, total nitrogen and other testing as required to satisfy Indiana Stream Pollution Control Board and the United States Environmental Protection Agency Regulations.

Material samples as received from the sampling devices shall be available to both contracting parties. In the event the Contractor provides to Contractee testing of samples, the cost of providing additional tests shall be paid by Contractee. The results of tests on samples shall be exchanged between the parties.

(3) Payment. The volume of sewage accepted by Contractor into its sewage system for processing from Contractee as measured by such metering devices shall be determined on or about the first Monday of each calendar month and Contractor shall bill Contractee within thirty (30) days thereafter for the charges applicable under rate schedules then in effect for the previous thirty (30) day metered period. Such charges shall commence on the first date sewage is accepted by Contractor into its sewage system from Contractee for processing. Payment shall be made by Contractee promptly, without the right to set off, within twenty (20) days after being billed by Contractor. This shall not be deemed to limit Contractee's right to litigate any disputed payment. Contractee shall make said payment to Contractor regardless of changes in conditions or litigation or other events so long as Contractor treats the sewage materials of Contractee.

(4) Rate Covenants of Contractee.

(A) Subject to the approval of the Public Service Commission of Indiana, Contractee shall institute, maintain and enforce a system of user charges in accordance with Section 204 (B) (1), Public Law 92-500 as amended and supplemented and the guidelines

and regulations promulgated from time to time thereunder by the Environmental Protection Agency.

Contractee shall adopt and enforce rates, rules and regulations for users of the sewage system of the Contractee which are in conformity with requirements adopted and enforced by the Contractor for the purpose of permitting the Contractor, on a continuing basis, to be awarded grants from the State of Indiana and from the Environmental Protection Agency and other governmental agencies which may now or in the future offer grants incident to the treatment and collection of sewage.

(B) Subject to the Approval of the Public Service Commission. Subject to the approval of the Public Service Commission of Indiana, Contractee shall institute, maintain and enforce an Industrial Cost Recovery System for industrial users (as such users are defined in 40 CFR 35.905), as required under applicable Rules and Regulations of the Environmental Protection Agency with particular reference to paragraphs 35.935-15 and 35.928 of the Rules and Regulations of the Environmental Protection Agency pursuant to Public Law 92-500, and all acts and amendments subsequent thereto.

Contractee shall collect in trust from industrial users of its system industrial cost recovery funds as may be required by the prevailing federal statutes and Environmental Protection Agency regulations referred to above as may be further directed and mandated by the Contractor, for and on behalf of Contractor, in respect of its requirements imposed by the Environmental Protection Agency so that said Contractor may, on a continuing basis, meet all of the requirements of its industrial Cost Recovery System. All funds collected from industrial users served by the sewage system of the Contractee in respect to state and federal grants of which the Contractor is grantee shall be held in trust as collected and shall be remitted to Contractor in accordance with payment provisions set forth elsewhere in this Agreement. In the event, pursuant to written notice thereof, Contractee fails to comply with enforcement

or collection requirements of the Industrial Cost Recovery and User Charge or any other provisions of Public Law 92-500 which failure places in jeopardy or in any other manner makes Contractor deficient and/or delinquent as a grantee of the state and federal governments, then Contractor can levy charges and collect revenues from Contractee to satisfy any such deficiency.

(C) Industrial Customers' Reports. In remitting Industrial Cost Recovery funds to Contractor as referred to above, information will be submitted by Contractee on a monthly basis or such longer period as agreed to by the parties in writing, including the name of the industry, industrial flow, analysis of waste and such other information as may be deemed necessary and useful to meet the requirements of Environmental Protection Agency and the Contractor.

5. Billing. Contractor will be responsible for reading the metering devices at metering and tap-in points and billing the Contractee therefor in accordance with rate schedules then in effect.

6. Litigation. The Contractee agrees and undertakes to hold harmless and indemnify Contractor from any damages and to bear the costs of any and all litigation arising from Contractee's operation of its sewage system.

7. Compliance with Rules, Regulations, Standards and Laws. The parties of this Agreement shall comply with all state and federal regulations, standards and laws regarding the collection and treatment of sewage and the operation of their respective systems. In the event studies and/or rehabilitations are necessary or required as a condition of Contractor receiving a sewage grant, Contractee shall fully cooperate with Contractor to satisfy such requirements.

8. More Than One Tap-In Point. Should it become necessary or convenient for the parties hereto for additional taps into the Contractor's sewer system in order to permit more adequate service,

then the location of such tap-in point must be mutually agreed upon between the parties. All of the terms and conditions of this Agreement shall pertain to extension of this Agreement.

9. Notices. Any notices required or desired to be given under this Agreement may be served personally or by mail. Any notice given by mail shall be deemed to have been served upon certified mailing, return receipt requested, postage prepaid, addressed to the party to be served at the last address filed by such party with the other party. At the date of the execution of this Agreement, Fort Wayne's address is City-County Building, Attention of the Mayor; and Contractee's official address is: Utility Center, 927 South Harrison Street, Post Office Box 875, Fort Wayne, Indiana 46801.

10. Benefit. All of the provisions of this Agreement shall inure to the benefit of, and shall be binding upon, the successors and assigns of this Agreement.

11. Rights in Event of Condemnation. If the Contractor shall exercise its right of eminent domain to acquire the assets of the Contractee, the Agreement shall expire and all rights herein provided to Contractee shall cease. Furthermore, in that event, neither this Agreement nor the rights of Contractee herein shall be considered an asset to be acquired or for which compensation shall be paid to the Contractee by Contractor. In the event the Contractor shall exercise its right of eminent domain successfully, this Agreement shall become null, void and no effect, and will not be considered as an asset by the Contractee.

12. Complete Agreement. The terms and provisions herein contained constitute the entire Agreement between the parties and shall supercede all previous communications.

ATTEST:

Charles W. Westerman
Clerk

CITY OF FORT WAYNE, INDIANA

By: Robert E. Armstrong
Robert E. Armstrong
Mayor

BOARD OF PUBLIC WORKS

ATTEST:

By: Henry P. Wehrenberg
Henry P. Wehrenberg, Chairman

Ursula Miller
Ursula Miller, Clerk
BOARD OF PUBLIC WORKS
CITY OF FORT WAYNE, INDIANA

By:
Ethel H. LaMar, Member

By: Max G. Scott
Max G. Scott, Member

SEWAGE UTILITIES OF INDIANA, INC.

ATTEST:

By
its Executive Vice President

L. DeVeal Hartman
Secretary

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, a Notary Public in and for said County and State, personally appeared the above named Robert E. Armstrong, Mayor of the City of Fort Wayne, Charles E. Westerman, Clerk of the City of Fort Wayne, Henry P. Wehrenberg, Chairman, and Ethel H. LaMar and Max G. Scott, Members of the Board of Public Works and Ursula Miller, Clerk of the Board of Public Works, City of Fort Wayne, who acknowledged that they did sign the foregoing Agreement and that the same is their free act and deed.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal, this 17th day of July 1979.

Notary Public
A resident of Allen County, Indiana

My Commission Expires:

3/6/80

STATE OF INDIANA)
)
COUNTY OF ALLEN)

Before me, A Notary Public in and for said County and State, personally appeared VERNON J. GORE, Exec. V.P & L. DeNeal HARTMAN, Secretary who acknowledged that they did sign the foregoing Agreement and that the same is their free act and deed.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal, the 16 day of July, 1979.

Notary Public
A resident of Allen Co.

My Commission Expires:
APRIL 18, 1981

APPROVED AS TO FORM AND LEGALITY

CITY ATTORNEY

4558

TITLE OF ORDINANCE SPECIAL ORDINANCE - WATER POLLUTION CONTROL TREATMENT AGREEMENT BETWEEN THE CITY OF FORT WAYNE & SEWAGE UTILITIES OF INDIANA, INC.

DEPARTMENT REQUESTING ORDINANCE BOARD OF PUBLIC WORKS S-79-07-38

SYNOPSIS OF ORDINANCE WATER POLLUTION CONTROL TREATMENT AGREEMENT BETWEEN THE CITY OF FORT WAYNE AND SEWAGE UTILITIES OF INDIANA, INC. WHICH PROVIDES FOR CONNECTING PINE VALLEY SEWER SYSTEM INTO THE ST. JOE INTERCEPTOR.

(AGREEMENT ATTACHED)

PRIOR APPROVAL REQUESTED, A COPY OF WHICH IS ATTACHED HERETO

EFFECT OF PASSAGE HOOKUP INTO CITY SEWER SYSTEM FOR PINE VALLEY, THEREBY ELIMINATING SEWAGE TREATMENT PROBLEMS, WHICH PRESENTLY EXIST

EFFECT OF NON-PASSAGE

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS) MONIES TO BE PAID TO CITY OF FORT WAYNE FOR HOOKUP BY SEWAGE UTILITIES OF INDIANA, INC.

ASSIGNED TO COMMITTEE

EP